IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

**J U D G M E N T**

S. B. CIVIL MISCELLANEOUS APPEAL NO.131/91
(Rani Devi @ Usha Rani & Ors. v. Devilal & Ors.)

Against the Order dated 26-03-1991
passed by Shri A.N.Purohit, RHJS, Judge,
Motor Accidents Claims Tribunal,
Sriganganagar in MACT Case No.40/89.

DATE OF JUDGMENT :::: NOVEMBER 01, 2007

**P R E S E N T**

**HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI**

Mr.R.K.Thanvi, for Appellant (s).
Mr.B.L.Bhati, Addl. G. A., for Respondent (s).

**BY THE COURT:-**

Appellants have preferred this appeal to challenge the judgment dated 26.03.1991, passed by the Motor Accidents Claims Tribunal, Sri Ganganagar in Claim Case No.40/89.

Claimants – appellants claimed a sum of Rs.11,70,000/-,

stating the fact that on 20.11.1988, at about 5.00 p.m., when Rajendra Kumar was near Telephone Exchange building and moving towards Padampur, then Jeep bearing No. RSC 9170 driven by Devilal, caused accident, resulting in death of Rajendra Kumar. It was urged that accident took place due to rash and negligent driving of Devilal.

Reply was filed by the respondents No. 3 and 4 before the Tribunal, denying their liabilities.

It is contended that authorized driver of the jeep involved in the accident was Diwan Chand but jeep was unauthorizedly driven by Devilal, as nobody authorized Devilal to drive the said jeep. It was further contended that the owner of the jeep is only Panchayat Samiti and not the Government. It was lastly contended that jeep was being driven on a moderate speed, thus accident had not taken place due to rash and negligent driving.

The Tribunal framed five issues and, thereafter, awarded a sum of Rs.1,39,000/- along with interest. However, the respondents No. 3 and 4 before the Tribunal were absolved from their liabilities on the ground that Devilal was not authorized to drive the vehicle and it was not otherwise for

owner's purpose or his business the vehicle was used at the time of accident.

Appellants have preferred this appeal, not only to challenge the award of compensation to the tune of Rs.1,39,000/-, but also to challenge the finding of the Tribunal in regard to the liability of respondents No. 3 and 4 before the Tribunal. The claimants have claimed original amount demanded by them in the claim petition, i.e., a sum of Rs.11,70,000/-, on the ground that income of the deceased was not properly assessed and thereby, quantum of compensation awarded to the claimants is not proper. It has further been pleaded that the Panchayat Samiti as well as Government were liable for compensation as they were vicariously liable for any act of the driver. Thus, challenging the finding of the Tribunal, it was prayed that the Panchayat Samiti and State Government should also be made liable for payment of compensation.

During the course of arguments of the appeal, leanred counsel for the appellants pressed only one ground which pertains to absolving Panchayat Samiti and Government from their liabilities. Learned counsel urged that the jeep was belonging to the Panchayat Samiti, and as Panchayat Samiti is financed by the State Government, thus Panchayat Samiti as

well as Government are liable for payment of compensation. The owner of the jeep is necessarily liable for all acts of its driver, in view of the fact that the owner of the vehicle is vicariously liable for all acts and omissions of the driver who is authorized to drive the vehicle not only for the purpose of business, but also where the vehicle is used on the instructions of the owner. It was contended that in the present matter, Devilal was driving the jeep having been authorized by Diwan Chand, hence the respondents No. 2 and 3 in appeal are liable for the acts and omissions of Devilal, because he was otherwise authorized to drive the vehicle. Referring to the judgment of the Tribunal, it was projected that the jeep was driven by Devilal with a permission of Diwan Chand as the Tribunal has already recorded this finding. Thus, in such cases, the owner of the vehicle cannot be absolved from their liability.

To support the argument, learned counsel for the appellants has referred the cases of State of Madhya Pradesh v. Prembai and Others (AIR 1979 Madhya Pradesh 85), Pushpabai Parshottam Udeshi and Othes v. M/s. Ranjit Ginning & Pressing Co. Pvt. Ltd. & Another (AIR 1977 SC 1735), Ajoy Kumar Singh v. Pata Dei and Others (AIR 1982 Orissa 51), Union of India v. Mrs.Marcia E. Dutta (AIR 1982 Gauhati 4), Smt.Mariyam Jusab and Others v. Hematlal Ratilal & Others (AIR

1982 Gujarat 23), Sita Bai & Another v. Parshotam & Others (Current Civil Cases III-1988 (1) page-612), Kota Sand Company and Another v. Santosh Talwr & Others (1985 ACJ 98) and Gujarat State Road Transport Corporation v. Haribhai Vallabhbhai Darji & Others (1984 A.C.J. 72).

According to the learned counsel for the appellants, judgments referred to above are on the same issue, wherein different Courts as well as Apex Court have taken a view that the owner of the vehicle is vicariously liable if accident took place due to negligence of driver who was either an authorized driver or driving the vehicle on instructions.

Per contra, learned counsel appearing for the Government, urged that the Government and Panchayat Samiti are not liable to pay compensation as Devilal was not their authorized driver and nor he was directed or authorized to drive the vehicle. Referring to the facts of this case, it was contended that only Diwan Chand was an authorized driver on the day of accident, Vikas Adhikari was not in the office so as to permit movement of vehicle, because vehicle is permitted to move only for the purpose of business of the office. Referring to the statement of Devilal, it was further contended that admittedly, Devilal had taken the vehicle for his personal use in an unauthorized

manner, hence in such circumstances, when the vehicle was used by unauthorized person without instructions and authority, coupled with the fact that the use of vehicle was not for the purpose of owner's business or with the consent of the owner of the vehicle, owner cannot be held liable to pay compensation. Referring to the judgment in the case of Sitaram Motilal Kalal v. Santanuprasad Jaishanker Bhatt (AIR 1966 SC 1697), it was submitted that the liability of the owner cannot be fastened in case the vehicle was not driven under the authority of the owner , more specifically when the vehicle was not used for the purpose of owner or for owner's business. Learned counsel for the State thus, prayed that the judgment of the Tribunal deserves to be maintained.

I have considered the rival submissions of the learned counsel for the parties and scanned the matter carefully.

Learned counsel for the appellants has referred the judgment of State of Madhya Pradesh v. Prembai and Others (AIR 1979 M.P. 85), wherein it was held that the driver is primarily liable for compensation for causing death or injuries by his rash and negligent driving of vehicle. His master is also vicariously liable for the act of the servant. If the vehicle is entrusted to an independent person and it is in complete control

of that independent person, then owner cannot be made liable for the act of that independent person or his servant. Referring to the facts of the case, the Court held that "in any case , the vehicle continued to be in the ownership of UNICEF". The Government though not the owner of the vehicle is liable under the General law for the acts of its servant in causing death or the two pedestrians, by his rash and negligent driving.

Perusal of the judgment does reveal that the facts of the case are same as in the present matter, because, in the present case, the jeep was driven by an unauthorized person for his private purposes. Hence, even if the ratio of the judgment referred to above is applied, Panchayat Samiti, being the owner of the vehicle, can be held liable for the acts of its servant, but, here, accident has not been caused by the servant of the Panchayat Samiti, therefore, the judgment rendered by the Madhya Pradesh High Court has no application in the present matter.

The second case referred to by the learned counsel is Pushpabai Parshottam Udesh & Others v. Ms/ Ranjit Ginning & Pressing Co. Pct. Ltd. (AIR 1977 SC 1735). In the said case, the Hon'ble Apex Court held in para 9 as under :-

"**9.** We will now refer to the three cases relied on by the High Court for coming to the conclusion that the accident did not take place during the course of employment. The first case referred to is Sitaram Motilal v. Santanuprasad Jaishanker, (1966) 3 SCR 527 : (AIR 1966 SC 1697). The owner of a vehicle entrusted it to A for plying it as a taxi. B who used to clean the taxi was either employed by the owner or on his behalf by A. A trained B to assist him in driving the taxi and took B for obtaining a licence for driving. While taking the test B caused bodily injury to the respondents. A was not present in the vehicle at the time of the accident. On the question whether the owner was liable the majority held the view that the owner was not liable. On the facts the court found that the person who had borrowed the taxi for taking out a licence and the driver who lent the same was not acting in the course of his business. The court on an application of the test laid down in various decisions held that there is no proof that the second defendant, the driver, was authorized to coach the cleaner might become a driver and drive the taxi and that it appeared more probable that the second defendant wanted someone to assist him in driving the taxi for part of the time and was

training the third defendant to share the task of driving. The owner's plea that it has not given any such authority was accepted by the court. Holding that it had not been proved tht the act was impliedly authorized by the owner or to come within any of the extensions of the doctrine of scope of employment the Court held that the owner is not liable. This Court has held that the test is whether the act was done on the owner's business of that it was proved to have been impliedly authorized by the owner. At page 537 it is stated that the law is settled that mastr is vicariously liable for the acts of his servants acting in the course of his employment. Unless the act is done in the course of employment, the servant's act does not make the employer liable. In other words, for the master's liability to arise, the act must be a wrongful act authorized by the master or a wrongful and unauthorized mode of doing some act authorized by the master. The extension of the doctrine of the scope of employment noticed in the judgment refers to the decision of Ormrod v. Crosville Motor Servides Ltd., (1953) 2 All ER 753 where Lord Denning stated: "It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his

> servant acting in the course of his employment. This is not correct. The owner is also liable if the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes." The Supreme Court accepted the test and to that extent this may be taken as an extension of the doctrine of scope of employment. Thus, on the facts as we have found that the accident took place during the course of employment the decision in Sitaram Kotilal Kalal is of no help to the respondents."

The perusal of the para, referred to above, reveals that the owner is liable for payment of compensation if the driver is with the owner's consent driving the car for the owner's business or for owner's purpose, therefore, outcome of the judgment is that if the vehicle is used for the purpose of owner or for owner's business purposes, then the servant's act would make owner vicariously liable for payment of compensation, but again, the case in hand is not such were the vehicle was used for owner's purpose or for owner's business through authorized driver. But, it is clear from the fact that not only vehicle was unauthorizedly used by Devilal, but the same was for his personal purposes and not for the purposes of the

owner or for its business. Hence, the import of the judgment referred to above, goes against the appellant instead to support, looking to the facts of present case.

Learned counsel for the appellants further referred the judgment rendered in Ajoy Kumar Singh v. Pata Dei & Others (AIR 1982 Orissa 51). In the said judgment, the issue was altogether different than exists in the present matter. The issue involved in the said matter was pertaining to liability of the Insurance Company on account of alleged breach of Policy, on the ground that vehicle was not driven by the named driver. The present matter is not concerned with the issue of the liability of the Insurance Company. Thus, the aforesaid judgment has not application in the present case.

The next case referred to by the learned counsel for the appellant is rendered in Union of India v. Mrs. Marcia E. Dutta (AIR 1982 Gauhati 4), wherein the issue was that if a person is given left while the Government vehicle was driven by the employee for official work, then as to whether the Government would be liable to pay compensation or not. Again, the facts of the said case are not akin to this case, because the case decided by the Gauhati High Court, the vehicle was driven by authorized person, whereas in the present matter, it was driven by the

unauthorized person and that too, vehicle was not transacted for owner's purpose or for his business. Therefore, I am unable to accept the application of the judgment, referred to above on the facts of present case.

The judgment rendered in Smt. Variyam Jusab & Others v. Hematlal Ratilal & Others (AIR 1982 Gujarat -23) is again almost on the same facts as were existing in the case decided by Gauhati High Court in the matter of Mrs. Marica E. Dutta under Section 409, therefore, the judgment rendered by the Gujarat High Court in Smt. Variyam Jusab's case cannot have any bearing on the present matter.

Learned counsel for the appellants has, further referred two judgments of this Court rendered in Sita Bai & Another v. Parshotam & Others (Current Civil Cases III – 1988 (1) Page-612) and Kota Sand Company & Another v. Santosh Talwr & Others (1985 ACJ 98). In the first case, jeep was under the charge of Executive Engineer. Hari Prasad was the driver who was assigned official work and while discharging the said work, accident took place, but it was found that at the time of accident, jeep was driven by one Purushottam. The Court held that vehicle was sent by the State Officer and was used for official purposes and, in those case, the Government cannot plead

immunity from payment of compensation and otherwise, the vehicle was driven under the express permission of the authorized driver of the State. Again, the facts of the aforesaid case are not same as the present case, because the vehicle was not used for the official purposes but was used by Devilal for his own purpose, thus cannot be said to be with the permission of the authorized driver. It is also clarified that in view of the judgment of the Supreme Court referred to in Pushpabai Parshottam Udeshi & Others v. M/s. Ranjit Ginning & Pressing Co. Pvt. Ltd. (AIR 1977 SC 1735), owner cannot be held liable, unless the vehicle is used for owner's purpose or owner's business and the vehicle is being driven by authorized person under instructions of the owner. In the second case, the State vehicle met with an accident at the time when same was driven by Executive Engineer, while the regular driver was also traveling in the jeep but not driving the vehicle. In those circumstances, the State was made liable, because the Executive Engineer was the In-charge of the vehicle and such In-charge was driving the vehicle accompanied by the regular driver, hence, looking to the fact that a person authorized to give direction for use of vehicle was found driving the vehicle by himself, then the Government is made liable. However, again, the facts of this case are not at par with the facts of the judgment rendered by this Court in the case of Kota Sand

Company & Another (Supra).

Last judgment referred to by the learned counsel for the appellant is rendered in Gujarat State Road Transport Corporation v. Haribhai Vallabhbhai Darji & Others (1984 A.C.J.72), wherein it was held that even third person unauthorizedly drove the bus and caused a serious accident, then driver was held negligent in leaving the bus unattended as the facts of the case show that if the driver was negligent, then owner can be made liable to pay compensation for the negligence of his employee. I am not impressed by the judgment rendered by Hon'ble Gujarat High Court as the same goes contrary to the judgment of the Hon'ble Apex Court, because unauthorized person, driving the vehicle, not for the business purposes or owner's purposes, then owner cannot be held liable.

Learned counsel, appearing for the State – respondents, placed reliance on the judgment rendered in Sitaram Motilal Kalal v. Santanuprasad Jaishanker Bhatt (AIR 1966 SC 1697). Dealing with the case, the Hon'ble Apex Court held thus :-

"(30) In Rickett's and Engelhart's cases,1915-1 KB 644 abd 1897-1 QB 240

(respectively) each servant was acting on the master's business at the time. If the two servans in Engelhart's case had gone for a picnic or the boy had borrowed the cart to give a joy ride to his friends, the master would not have been liable although the effective cause would still have been the elder servant's negligence. The difference lies in this that in the two cases the negligent act took place in the execution of the master's business and in the examples suggested by us, no question of master's business or the scope of the servant's or agent's employment arises, because the acts are clearly outisde that scope. Going for a picnic or lending the cart so that the co-servant's friends may go for an outing is not in the course of the master's employment. Beard's case, 1900-2 QB 530 when compared with Rickett's case, 1915-1 KB 644 brings out the difference. In (1928) 44 TLR 294 the master himself lent the car to the servant for the latter's private work and the master was not held responsible for the negligence of the servant in causing injury because neither was the journey on the master's account nor was the master in control at the time. Sir John Salmond (13th Edn., p.124) has summed up the law thus :

"..... a master is not responsible for the negligence or other wrongful act of his servant simply because it is committed at a time when the servant is engaged on his

master's business. It must be committed in the course of that business, so as to form a part of it, and not be merely coincident in time with it."

(31) The scope of employment of a servant need not of course be viewed narrowly, but the essential element that the wrong must be committed by the servant during the course of the employment, i.e. In doing the master's business ought always to be present. In Century Insurance Co. v. Northern Ireland Road Transport Board, 1942 AC 509 the driver of a petrol lorry while transferring petrol from the lorry to an underground tank, struck a match to light a cigarette and threw it on the floor, and thereby caused a fire and explosion which did great damage. The masters were held liable because the negligence was in the discharge of the duty by the servant. Although the act of lighting the cigarette was something the driver did for himself and was by itself quite harmless, it could not be regarded in the abstract and was a negligent method of conducting the mater's work. Similarly in Smith v. Martin and Kingston-upon-Hull Corpn., 1911-2 KB 775 at p. 784 a school authority was held liable when a teacher during school hours sent a gird aged 14 wearing a print pinafore to poke the fire and to draw out the damper in a great in the teachers' common room and the child was burnt. It was held that the teacher's duty was

> to prove education in the widest sense and included expecting obedience from the pupils and this was an act of negligence in the discharge of such duty."

The facts of the case referred to above, show that the same are similar to that of the present matter. In the aforesaid case also, vehicle was driven by unauthorized person. In the present matter,not only the vehicle was driven by unauthorized person, but same was not even for owner's purpose or his business, therefore, in those circumstances, even owner cannot be held liable for vicarious liability.

In view of the above, I am not inclined to accept the appeal as the judgments cited by the learned counsel for the appellants have no application in the present matter, more so, the judgment referred to by the learned counsel appearing for the State – respondents in the case of Sitaram Motilal Kalal v. Santanuprasad Jaishanker Bhatt (AIR 1966 SC 1697) covers the controversy of the present matter. The appeal is thus, having no force, the same is dismissed on the ground urged at the time of hearing because the learned counsel for the appellants has not pressed any other argument. Costs made easy.

**(MUNISHWAR NATH BHANDARI), J.**

scd.